

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau (“the Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and Farmworker Educational Radio Network, Inc. (“Farmworker”),¹ licensee of radio station KCEC-FM, in Wellton, Arizona, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating an enforcement proceeding relating to whether Farmworker violated Section 11.35 of the Commission’s Rules (“Rules”)² by failing to ensure the operational readiness of the KCEC-FM’s Emergency Alert System (“EAS”) equipment.

II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:

- a. “Act” means the Communications Act of 1934, as amended, Title 47 of the United States Code.
- b. “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree.
- c. “*Application for Review*” means the application for review filed by Farmworker on April 2, 2007, concerning the Western Region’s *Forfeiture Order*.
- d. “Bureau” means the Commission’s Enforcement Bureau.
- e. “Commission” or “FCC” means the Federal Communications Commission.
- f. “Effective Date” means the date the Adopting Order is released by the Bureau.
- g. “Enforcement Proceeding” means the FCC investigation into the alleged Rule violation by Farmworker culminating in the *Notice of Apparent Liability for Forfeiture*.
- h. “Farmworker” means Farmworker Educational Radio Network, Inc., its subsidiaries, affiliates, and any successors or assigns.
- i. “*Forfeiture Order*” means the order released by the Western Region of the Enforcement Bureau, assessing an \$8,000 forfeiture to Farmworker: *Farmworkers Educational Radio Network, Inc., Forfeiture Order*, 21 FCC Rcd 6959 (EB 2006).
- j. “License” means broadcast radio station KCEC-FM, Wellton, Arizona.
- k. “*Memorandum Opinion and Order*” or “*MO&O*” means the order released by the

¹ We note that the FCC authorization for KCEC-FM lists the licensee as Farmworkers Educational Radio Network, Inc., however, the correct name of the entity is Farmworker Educational Radio Network, Inc.

² 47 C.F.R. § 11.35.

Enforcement Bureau, affirming the Western Region's assessment of an \$8,000 forfeiture to Farmworker: *Farmworkers Educational Radio Network, Inc.*, *Memorandum Opinion and Order*, 22 FCC Rcd 4133 (EB 2007).

- l. "Notice of Apparent Liability for Forfeiture" or "NAL" means *Farmworkers Educational Radio Network, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532940003 (Enf. Bur., Western Region, San Diego Office, released July 20, 2005).
- m. "Parties" means Farmworker and the Bureau.
- n. "Radio Facility" means the facility authorized under the License.
- o. "Rules" means the Commission's Rules found in Title 47 of the Code of Federal Regulations.

III. BACKGROUND

3. On April 8, 2005, an agent from the Commission's San Diego Office conducted an inspection at the main studio of KCEC-FM located at 670 E. 32nd Street, Suite 12A, Yuma, Arizona. Although EAS equipment was installed, the agent found that it was not operational at the time of inspection. It was subsequently determined, and conceded by Farmworker, that the EAS receiver was not plugged in. Initially, during the inspection, the agent determined that no audio from the EAS receiver for the designated first and second local primary stations ("LP-1" and "LP-2") could be heard. At the request of the agent, the designated LP-1 and LP-2 stations ran a required weekly test ("RWT") during this inspection and the station's EAS equipment did not detect the activation. A review of the EAS log and printouts generated by the EAS encoder/decoder indicated that from January 2004 through April 2005, only four monthly tests ("RMT") were received from the local primary stations and none of these tests were retransmitted. EAS logs also indicated that numerous RWTs were not transmitted by KCEC-FM and numerous RWTs were not received from either designated LP-1 or LP-2 stations during this same period. No entries were made by KCEC-FM staff in the EAS log to identify the causes of these failures or what steps were taken to remedy any failures.

4. On April 22, 2005, the San Diego agent spoke with KCEC-FM's Chief Engineer. The Chief Engineer acknowledged that problems were found with the EAS equipment during the engineer's inspection of the station's EAS equipment on April 9, 2005. Specifically, he indicated that the EAS equipment was originally set for the automatic mode to receive and to forward the information received for the tests from the local primary stations. However, the EAS equipment was switched to the manual mode, requiring a staff person to manually resend the RMT. Also, the Chief Engineer indicated that the EAS receiver was not connected properly to a power source which explained why the tests sent by the LP-1 and LP-2 had not been received by KCEC-FM.

5. On July 20, 2005, the Enforcement Bureau's San Diego Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$8,000 to Farmworker, finding that Farmworker apparently repeatedly failed to ensure the operational readiness of the KCEC-FM EAS equipment. Farmworker filed a response to the NAL on August 22, 2005 ("*Response*"). On June 29, 2006, after reviewing Farmworker's *Response*, the Western Region, Enforcement Bureau, released the *Forfeiture Order*, and imposed an \$8,000 forfeiture on Farmworker for its repeated violation of Section 11.35 of the Rules. On July 31, 2006, Farmworker filed a petition for reconsideration of the *Forfeiture Order*. The petition was denied by the Bureau in the *Memorandum Opinion and Order*, released March 2, 2007. On

April 2, 2007, Farmworker filed an *Application for Review* of the *Memorandum Opinion and Order*.

IV. TERMS OF SETTLEMENT

6. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

7. The Parties agree that this Consent Decree shall not constitute an adjudication on the merits or a factual or legal determination regarding any compliance or noncompliance with the Act or the Rules. The Parties further agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Farmworker does not admit or deny any noncompliance, violation, or liability associated with or arising from its acts or omissions involving the Rules that are the subject of this Consent Decree.

8. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between Farmworker and the Bureau regarding possible violations of the Rules with respect to the operation of radio station KCEC-FM prior to the Effective Date of this Consent decree. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Enforcement Proceeding and cancel the *Memorandum Opinion and Order*.

10. In consideration for the termination by the Bureau of the Enforcement Proceeding and in accordance with the terms of this Consent Decree, Farmworker agrees to the terms, conditions and procedures contained herein, and agrees to withdraw the *Application for Review* within 30 calendar days of the Effective Date.

11. Farmworker acknowledges that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

12. Farmworker to make a voluntary contribution to the United States Treasury in the amount of four thousand dollars (\$4,000) within 30 calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Farmworker shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

13. Farmworker also agrees that within one month of the Effective Date, the following Compliance plan will be put into place:

- a. Management staff from Farmworker’s headquarters will hold a meeting at KCEC-FM

studios in Wellton, Arizona, with all local station employees, to review FCC requirements for EAS systems generally. The review will focus on operational and documentation procedures as outlined in the FCC's current EAS Handbook. In addition, the meeting will include a hands-on demonstration of how KCEC-FM's EAS system is supposed to function and how to confirm that the system is working properly.

- b. At that same meeting, one KCEC-FM employee will be designated as primarily responsible for EAS compliance, and another will be designated with back-up responsibility, in the absence of the person with primary responsibility.
- c. If in the future another staff person is hired as a replacement for a current station employee charged with responsibility for EAS compliance, the new hire will be fully trained by an employee with experience with the system.
- d. For the first two months following the meeting, the KCEC-FM employee(s) designated as responsible for EAS compliance will perform twice-weekly checks confirming that the station's EAS system is capable of, and in fact is, (a) properly receiving and (b) properly transmitting the required EAS signals. Documentation that the checks have been completed and that the system is working properly will be noted on an EAS log, initialed by the responsible employee, and faxed to licensee headquarters at the end of each month.
- e. After the first two months, similar checks will be conducted and documented on a weekly basis, with the results faxed to licensee headquarters at the end of each month. This procedure, with monitoring by licensee headquarters management, will be implemented on a continuing basis for a period of one year, after which weekly logging will continue but monthly reporting will cease.
- f. Any anomalies in the functioning of KCEC-FM EAS equipment will be noted by a dated entry in the station's EAS log, and a telephone call reporting the problem will immediately be placed to licensee headquarters and documented in the log. The licensee will follow up to make sure that steps necessary to correct any such identified problem are taken promptly.
- g. KCEC-FM staff will retain all EAS log sheets with its business records at the station, for the duration of the license term.

14. The Bureau agrees that, in the absence of new material evidence, it will not entertain, or institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Farmworker for any alleged violation of the Act or the Rules regarding the matters that were the subject of the Enforcement Proceeding. The Bureau also agrees that, in the absence of new material evidence, it will not initiate or recommend to the Commission any new proceeding, formal or informal, against Farmworker regarding the matters that were the subject of the Enforcement Proceeding. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Enforcement Proceeding through the Effective Date to initiate on its own motion, or recommend to the Commission any new proceeding, formal or informal, or take any action on its own motion against Farmworker with respect to Farmworker basic qualifications to hold Commission licenses or authorizations. Nothing in this Consent Decree shall prevent the Commission from instituting investigations or enforcement proceedings against Farmworker in the event of any other alleged misconduct that violates this Consent Decree or which violates

any provision of the Act or the Rules.

15. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Farmworker fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

16. The Parties agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

17. Farmworker's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

18. The Parties waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, or modification.

19. The Parties agree that if any court of competent jurisdiction renders this Consent Decree invalid, it shall become null and void and may not be used in any manner in any legal proceeding.

20. The Parties agree that if either party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Farmworker nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Farmworker and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of the Consent Decree.

21. Farmworker agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to matters discussed in this Consent Decree.

22. This Consent Decree cannot be modified without the advance written consent of both Parties.

23. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau:

By: _____
George R. Dillon, Associate Chief Date

For Farmworker Educational Radio Network, Inc.:

By: _____
President Date